

CHAPTER 10 DISCIPLINE

[Prior to 2/8/89, see Veterinary Medicine, Board of(842) Ch 6]

811—10.1(169,272C) General. The board has authority to impose discipline for any violation of Iowa Code chapters 169 and 272C or the rules promulgated thereunder.

811—10.2(169,272C) Method of discipline. The board has authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specified period.
3. Prohibit permanently, until further order of the board or for a specified period, the engaging in specified procedures, methods or acts.
4. Probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental examination.
8. Impose civil penalties not to exceed \$1000.
9. Issue citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

811—10.3(169,272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative seriousness of the violation as it relates to assuring the citizens of this state a high standard of professional care.
2. The facts of the particular violation.
3. Any extenuating circumstances or other countervailing considerations.
4. Number of prior violations or complaints.
5. Seriousness of prior violations or complaints.
6. Whether remedial action has been taken.
7. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee.

811—10.4(169,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in rule 10.2(169,272C), including civil penalties in an amount not to exceed \$1000, when the board determines that the licensee is guilty of any of the following acts or offenses:

10.4(1) Fraud in procuring a license, which includes but is not limited to an intentional perversion of the truth in making application for a license to practice veterinary medicine in this state, and includes false representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board or the Iowa department of agriculture and land stewardship any false or forged diploma, certificate, affidavit, identification, or qualification in making an application for a license in this state.

10.4(2) Professional incompetency, which includes but is not limited to violations of the standards of practice as set out in 811—Chapter 12. Professional incompetency may also be established by:

- a.* A substantial lack of knowledge or ability to discharge professional obligations within the scope of the veterinarian's practice;
- b.* A substantial deviation by the veterinarian from the standards of learning or skill ordinarily possessed and applied by other veterinarians acting in the same or similar circumstances;

c. A failure by a veterinarian to exercise in a substantial respect that degree of care which is ordinarily exercised by the average veterinarian acting in the same or similar circumstances;

d. A willful or repeated departure from or the failure to conform to the minimal standard or acceptable and prevailing practice of veterinarians.

10.4(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession includes, but is not limited to, an intentional perversion of the truth, either orally or in writing, by a veterinarian in the practice of veterinary medicine and includes any representation contrary to their legal or equitable duty, trust or confidence and is deemed by the board to be contrary to good conscience, prejudicial to the public welfare or may operate to the injury of another.

b. Engaging in unethical conduct includes, but is not limited to, a violation of the standards of practice as set out in 811—Chapter 12, and may include acts or offenses in violation of the code of ethics of the American Veterinary Medical Association.

c. Practice harmful or detrimental to the public includes, but is not limited to, the failure of a veterinarian to possess and exercise that degree of skill, learning and care expected of a reasonable, prudent veterinarian acting in the same or similar circumstances, including a violation of the standards of practice as set out in 811—Chapter 12, or when a veterinarian is unable to practice veterinary medicine with reasonable skill and safety to a client's animals as a result of a mental or physical impairment or chemical abuse.

d. Practice harmful or detrimental to the public includes, but is not limited to, the use of a rubber stamp to affix a signature to a prescription. A person who is unable, due to a physical handicap, to make a written signature or mark may substitute in lieu of a signature a rubber stamp which is adopted by the handicapped person for all purposes requiring a signature and which is affixed by the handicapped person or affixed by another person upon the request of the handicapped person and in their presence.

e. Practice harmful or detrimental to the public includes, but is not limited to, the practice of maintaining any presigned prescription which is intended to be completed and issued at a later time.

10.4(4) Habitual intoxication or addiction to the use of drugs, which includes but is not limited to the inability of a veterinarian to practice veterinary medicine with reasonable skill and safety by reason of the excessive use of alcohol, drugs, narcotics, chemicals or other types of material on a continuing basis, or the excessive use of alcohol, drugs, narcotics, chemicals or other type of material which may impair a veterinarian's ability to practice the profession with reasonable skill and safety. The board may require participation in a treatment program as a condition of license probation or suspension, and shall consider the licensee's willingness to participate in a treatment program when determining the appropriate degree of disciplinary sanction.

10.4(5) Conviction of a felony related to the profession or occupation of the licensee, or the conviction of any felony that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within a profession includes, but is not limited to, the conviction of a veterinarian who has committed a public offense in the practice of their profession which is defined or classified as a felony under state or federal law, or who has violated a statute or law designated as a felony in this state, another state, or the United States, which statute or law relates to the practice of veterinary medicine or who has been convicted of a felonious act, which is so contrary to honesty, justice or good morals, and so reprehensible as to violate the public confidence and trust imposed upon a veterinarian in this state.

10.4(6) Fraud in representations as to skill or ability, which includes but is not limited to a veterinarian having made misleading, deceptive or untrue representations as to the veterinarian's competen-

cy to perform professional services for which the veterinarian is not qualified to perform by training or experience.

10.4(7) Use of untruthful or improbable statements in advertisements, which includes but is not limited to an action by a veterinarian in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation and includes statements which may consist of, but not be limited to:

1. Inflated or unjustified expectations of favorable results;
2. Self-laudatory claims that imply that the veterinarian engaged in a field or specialty of practice for which the veterinarian is not qualified. A veterinarian is not qualified to claim or imply specialization unless the veterinarian is a member in good standing of the respective specialty board or college recognized by the AVMA;
3. Representations that are likely to cause the average person to misunderstand; or
4. Extravagant claims or to proclaim extraordinary skills not recognized by the veterinary profession.

10.4(8) Willful or repeated violations of the provisions of Iowa Code chapters 169 and 272C and rules promulgated thereunder by the board.

10.4(9) Violating a statute or law of this state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of veterinary medicine.

10.4(10) Failure to report a license revocation, suspension or other disciplinary action taken by a licensing authority of another state, territory or country within 30 days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

10.4(11) Failure of licensee or an applicant for licensure in this state to report any voluntary agreement to restrict the practice of veterinary medicine entered into in another state, district, territory or country, or failure to report any adverse judgment in a malpractice action to which the licensee is a party, and every settlement of a claim against the licensee alleging malpractice, within 30 days of said voluntary agreement, adverse judgment, or settlement.

10.4(12) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice veterinary medicine.

10.4(13) Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of veterinary medicine in which proceeding actual injury to a patient need not be established, which includes, but is not limited to, a violation of the standards of practice as set out in 811—Chapter 12; or the committing by a veterinarian of an act contrary to honesty, justice or good morals, whether the same is committed in the course of their practice or otherwise, and whether committed within or without this state, where such act substantially relates to the practice of veterinary medicine.

10.4(14) Inability to practice veterinary medicine with reasonable skill and safety by reason of a mental or physical impairment or chemical abuse.

10.4(15) Violating a lawful order of the board previously entered by the board in a disciplinary hearing.

10.4(16) Being adjudged mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.

10.4(17) Indiscriminately or promiscuously prescribing, administering or dispensing any drug; or prescribing, administering or dispensing any drug for other than a lawful purpose.

10.4(18) Knowingly submitting a false report of continuing education or failure to submit the triennial report of continuing education.

10.4(19) Failure to comply with a subpoena issued by the board.

10.4(20) Willful or gross negligence.

10.4(21) Obtaining any fee by fraud or misrepresentation.

10.4(22) Negligence in failing to exercise due care in the delegation of veterinary services to or supervision of registered veterinary technicians, veterinary assistants, employees or other individuals, whether or not injury results.

10.4(23) Violating any of the grounds for the revocation or suspension of a license as listed in Iowa Code section 169.13 or these rules.

811—10.5(169,272C) Investigation of reports of judgments and settlements. Reports received by the board from the commissioner of insurance, insurance carriers and licensees involving adverse judgments in a professional malpractice action, and settlement of claims alleging malpractice, which involves acts or omissions which constitute negligence, careless acts or omissions in the practice of veterinary medicine shall be reviewed and investigated by the board in the same manner as is prescribed in these rules for the review and investigation of written complaints.

811—10.6(169,272C) Reporting of acts or omissions. Each licensee, having firsthand knowledge of acts or omissions set forth in rule 10.4(169,272C), shall report to the board those acts or omissions when committed by another person licensed to practice veterinary medicine, provided, however, no licensee shall be required to report information which is deemed to be a confidential communication as the result of a privileged relationship or which is prohibited by state or federal statute. The report shall include the name and address of the licensee and the date, time and place of the incident.

811—10.7(169,272C) Immunities. A person shall not be civilly liable as a result of filing a report or complaint with the board or for the disclosure to the board or its agents or employees, whether or not pursuant to a subpoena of records, documents, testimony or other forms of information which constitute privileged matter concerning a recipient of veterinary care in connection with proceedings of a peer review committee, or in connection with the duties of the board. However, such immunity from civil liability shall not apply if such act is done with malice.

811—10.8(169,272C) Confidentiality of investigative files. Complaint files, investigation files, and all other investigation reports and other investigative information in the possession of the board or peer review committee acting under that authority of the board or its employees or agents which relate to licensee discipline shall be privileged and confidential, and shall not be subject to discovery, subpoena, or other means of legal compulsion for their release to any person other than the licensee and the board, its employees and agents involved in licensee discipline or be admissible in evidence in any judicial or administrative proceeding other than the proceeding involving licensee discipline. The licensee is not entitled to access to these investigative reports and documentary information until a disciplinary proceeding has been commenced. However, a final written decision and finding of fact of the board in a disciplinary proceeding shall be public record.

811—10.9 to 10.49 Reserved.

DISCIPLINARY PROCEDURE

811—10.50(169,272C) General. The proceeding for revocation or suspension of a license to practice veterinary medicine or to discipline a person licensed to practice veterinary medicine or the denial of a license, shall be substantially in accord with the following procedures which are an alternative to or in addition to the procedures stated in Iowa Code section 169.14.

811—10.51(169,272C) Initiation of investigation. Any person may submit a complaint regarding a licensee to the board. Written complaints may be addressed to: Iowa Board of Veterinary Medicine, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, East 9th and Grand Avenue, Des Moines, Iowa 50319. The board may, upon receipt of a written or verbal complaint, or may upon its own motion, pursuant to other evidence received by the board, including reports or information received from any regulatory or law enforcement agency, review and investigate alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rule for licensee discipline. A complainant shall provide, either verbally or in writing, a concise statement of the facts which clearly and accurately apprises the board of the allegations against the licensee. The board may consider anonymous complaints if the board determines sufficient evidence exists to proceed with an investigation.

811—10.52(169,272C) Investigation of allegations.

10.52(1) In order to determine if probable cause exists for a hearing on the complaint, the board, the chairperson or someone designated by the chairperson, shall cause an investigation to be made into the allegations of the complaint. In this regard, the person complained of may be furnished with information concerning the complaint and given the opportunity to informally present a position or defense respecting the allegations of the complaint prior to the commencement of a contested case. However, the licensee is not entitled to investigative reports and documentary information unless or until a disciplinary proceeding has been commenced. The licensee's position or defense may be submitted in writing.

10.52(2) The board as a whole may conduct an investigation, may designate one or more board members to conduct the investigation, or may utilize investigators available from the department of agriculture and land stewardship, the department of inspections and appeals, or other regulatory or law enforcement agencies with coextensive jurisdiction regarding an alleged violation. Investigations conducted by nonboard members may be assigned to one or more board members for supervision and consultation. The board retains ultimate control over the direction or continuation of any board investigation. A board member who has participated in any way in an investigation is not disqualified from participating in any resulting adjudication of the allegations solely by virtue of the board member's participation. However, an investigating board member may be disqualified if actual bias is shown or if the board member will be required to testify against the licensee.

811—10.53(169,272C) Investigative interviews.

10.53(1) In the course of conducting or directing an investigation, the board may request the licensee to attend an investigatory interview before the board. The licensee is not required to attend or participate in the informal discussion. However, the licensee is required to inform the board as to whether the licensee will attend the informal discussion.

10.53(2) Because an investigatory interview constitutes a part of the board's investigation of a potential disciplinary case, statements that are made and facts which are discussed at the investigatory interview may be considered by the board in the event the matter proceeds to a contested case hearing and those statements and facts are independently introduced into evidence.

10.53(3) The licensee may, but is not required to, be represented by an attorney at the informal discussion. The attorney may advise the licensee and may participate in general discussion, and may, upon leave of the board, make statements on behalf of the licensee, but is not entitled to make procedural motions or objections or engage in argumentative advocacy on behalf of the licensee.

10.53(4) The investigative interview shall be held in closed session pursuant to Iowa Code section 21.2(2).

10.53(5) The licensee or the board may seek an informal stipulation or settlement of the case at the time of the investigative interview. The chairperson or the chairperson's designee may negotiate on behalf of the board. All informal settlements are subject to approval of a majority of the full board. If approved, the informal settlement becomes the final disposition of the matter and is a public record. No

board member is disqualified from participating in the adjudication of any resulting contested case by virtue of reviewing the investigative material or having participated in negotiation discussions. If the parties agree to an informal settlement at the investigative interview, a statement of charges shall be filed simultaneously with the settlement document. In the event a settlement is not reached under this rule and a statement of charges is subsequently filed, the settlement procedure set forth in rule 811—10.61(169,272C) may still be utilized.

811—10.54(169,272C) Ruling on the initial inquiry.

10.54(1) *Rejection.* If a determination is made by the board to reject the case, the complainant, if known, shall be informed of the board's action, specifying the reason for rejection. A letter of explanation concerning the decision of the board shall be sent to the respondent.

10.54(2) *Requirement of further inquiry.* If a determination is made by the board to order further inquiry, the complaint and recommendations by the investigator(s) shall be returned to the investigator(s) along with a statement specifying the information deemed necessary.

10.54(3) *Acceptance of the case.* If a determination is made by the board pursuant to Iowa Code section 272C.3(1) that a disciplinary proceeding is warranted, the board may initiate formal disciplinary proceedings by ordering the filing of a statement of charges and notice of hearing.

811—10.55(169,272C) Filing of statement of charges and notice of hearing—normal service.

The board may, upon a determination of probable cause, order the filing of a statement of charges and notice of hearing, which shall be served upon the licensee at least 30 days before said hearing in the manner required for the service of notice of the commencement of an ordinary action or by certified mail, return receipt requested.

811—10.56(169,272C) Notice by publication. If licensees have absented or removed themselves from the state, the notice and statement of the charges shall be so served at least 30 days before the date of the hearing, wherever the licensees may be found. If the whereabouts of the licensee are unknown, service may be had by publication as provided in the rules of civil procedure upon filing the affidavit required by the rules. In case the licensee fails to appear, either in person or by counsel at the time and place designated in said notice, the board shall proceed with the hearing as hereafter provided.

811—10.57(169,272C) Statement of charges and notice of hearing—contents.

10.57(1) The statement of charges shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged and shall be of sufficient detail to enable the efficient preparation of the respondent's defense. The statement of charges shall specify the statute(s) and any rule(s) which are alleged to have been violated and may also include the additional information which the board deems appropriate to the proceeding.

10.57(2) Legal representation. Every statement of charges and notice of hearing prepared by the board shall be reviewed and approved by the office of the attorney general, which shall be responsible for legal representation of the public interest in all proceedings before the board.

10.57(3) Notice of hearing. The notice of hearing shall state:

- a. The date, time and place of hearing.
- b. A statement that the party may be represented by legal counsel at the hearing.
- c. A statement of the legal authority and jurisdiction under which the hearing is to be held.
- d. A reference to the statutes and rules involved.
- e. A short and plain statement of the matter asserted.
- f. A statement that the respondent has the right to appear at a hearing and be heard.
- g. A statement requiring the respondent within a period of ten days after receipt of the notice of hearing to:

- (1) Acknowledge receipt of the notice of hearing;

- (2) State whether or not the respondent will be present at the hearing;
- (3) State whether the respondent will require an adjustment of date and time of the hearing; and
- (4) Include in the acknowledgment, at the respondent's option, any admissions, denials, explanations, remarks or statements of mitigating circumstances or any additional facts or information the respondent deems relevant to the complaint and which may be of assistance in the ultimate determination of the case.

811—10.58(169,272C) Continuances. A party has no automatic right to a continuance or delay of the board's hearing procedure or schedule. However, a party may request a continuance of the secretary no later than seven days prior to the date set for hearing. Within seven days of the date set for hearing, no continuances shall be granted except for extraordinary, extenuating or emergency circumstances. The secretary shall have power to grant continuances after consultation, if needed, with the chairperson of the board. A board member shall not be contacted in person, by mail or telephone by a party seeking a continuance.

811—10.59(169,272C) Request for a more definitive statement. The respondent may at any time request the board to make the statement of charges more definite and certain, by submitting to the board a written request indicating the matters concerning which more definite statement is necessary in order to facilitate the preparation of the respondent's defense. The board will respond to a request for a more definite statement within 20 days of receipt thereof. The board may either issue a more definitive statement or may determine that no greater definition is necessary. If the board does not issue a more definitive statement within 20 days of the receipt of the request or prior to the date of the hearing, whichever is earlier, the request is deemed denied.

811—10.60(169,272C) Prehearing procedure.

10.60(1) The presiding officer either on the presiding officer's own motion or at the request of either the secretary, the assistant attorney general representing the public interest, or the respondent may hold a prehearing conference which shall be scheduled not less than two days prior to the hearing. Notice by ordinary mail shall be given to each party of the date, time and place of the prehearing conference.

10.60(2) At least 15 days prior to the date of the hearing, the respondent and the assistant attorney general representing the public interest shall exchange lists of witnesses they intend to call to testify at the hearing. Failure to furnish this list or to amend the list as necessary prior to the 15-day deadline may result in the exclusion of in-person testimony from omitted witnesses other than the respondent personally.

811—10.61(169,272C) Informal settlement.

10.61(1) Parties.

a. A contested case may be resolved by informal settlement. Settlement negotiations may be initiated at any stage of a contested case proceeding. Neither party is obligated to utilize this procedure to settle the case. Negotiation of an informal settlement may be initiated by the board, the assistant attorney general representing the public interest, or the respondent. Initiation by the respondent shall be directly with the assistant attorney general representing the public interest.

b. The chairperson or the chairperson's designee has authority to negotiate on behalf of the board.

10.61(2) Waiver of notice and opportunity to be heard. Consent to negotiation by the respondent constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 during informal settlement negotiation, and the assistant attorney general is thereafter authorized to discuss informal settlement with the board's designee until that consent is affirmatively withdrawn.

10.61(3) *Negotiation deadline.* Negotiations for a proposed settlement shall be completed at least seven days prior to the hearing date. However, in instances where additional time will clearly lead to a satisfactory settlement prior to the hearing date, the board chairperson may grant additional time.

10.61(4) *Board approval.* The full board shall not be involved in negotiation until a final, written settlement executed by the respondent is submitted to the full board for approval. All informal settlements are subject to approval of a majority of the full board. If approved, the informal settlement becomes the final disposition of the matter and is a public record. If the board fails to approve an informal settlement, it shall be of no force or effect to either party.

10.61(5) *Participation of board member.* The chairperson or a board member who is designated to act in negotiation of an informal settlement may review investigative material in the course of conducting the negotiation. The negotiating board member is not disqualified from participating in the adjudication of the contested case by virtue of reviewing the investigative material or having participated in negotiation discussions.

811—10.62(169,272C) *Appearance.* The licensee shall have the right to appear in person or by attorney before the board at the licensee's expense.

811—10.63(169,272C) *Subpoena powers.* In connection with the initial inquiry, the board is authorized by law to subpoena books, papers, records and any other real evidence whether or not privileged or confidential under law, to help it determine whether it should institute a contested case proceeding (hearing). After service of the notice of hearing, the following procedures are available to the parties in order to obtain relevant and material evidence:

a. Board subpoenas for books, papers, records and other real evidence will be issued to a party upon request. Application should be made to the secretary specifying the evidence sought. Subpoenas for witnesses may also be obtained. The secretary shall issue all subpoenas for both parties upon request.

b. Discovery procedures applicable to civil actions are available to the parties in the proceeding under these rules.

c. Evidence obtained by subpoena or through discovery shall be admissible at the hearing if it is otherwise admissible under rule 10.69(169,272C) or by statute.

d. The evidence outlined in Iowa Code section 17A.13(2), where applicable and relevant, shall be available to a party upon request.

811—10.64(169,272C) *Refusal to obey subpoena.* In the event of a refusal to obey a subpoena, the board may petition the district court for its enforcement. Upon proper showing, the district court shall order the person to obey the subpoena, and if the person fails to obey the order of the court, the person may be found guilty of contempt of court. The presiding officer may also administer oaths and affirmations, take or order that depositions be taken, and grant immunity to a witness from disciplinary proceedings initiated either by the board or by other state agencies which might otherwise result from the testimony to be given by the witness to the panel.

811—10.65(169,272C) *Failure by respondent to appear.* If a respondent, upon whom a proper notice of hearing has been served, fails to appear either in person or by counsel at the hearing, the board shall proceed with the conduct of the hearing, and the respondent shall be bound by the results of such hearing to the same extent as if the respondent were present.

811—10.66(169,272C) *Record of proceedings.* Oral proceedings shall be recorded either by mechanical or electrical means, or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription thereof

shall be filed with and maintained for at least five years from the date of decision. Any party to a proceeding may record, at their own expense, stenographically or electronically, any portion or all of the proceedings.

811—10.67(169,272C) Hearings—conduct. A hearing shall be conducted before the board. Unless a closed hearing is requested by the licensee in writing at least two days prior to the hearing, the hearing shall be open to the public.

10.67(1) When, in the opinion of a majority of the board, it is desirable to obtain specialists within an area of practice of the profession when holding disciplinary hearings, the board may appoint a panel of not less than three specialists not having a conflict of interest to make findings of fact and to report to the board. Such findings shall not include any recommendations for or against licensee discipline.

10.67(2) When a hearing is held before the board, the board chairperson, or someone designated by the chairperson who may be a nonmember, shall act as the presiding officer. The presiding officer shall be in control of the proceedings and shall have the authority to administer oaths, to admit or exclude testimony or other evidence and to rule on all motions and objections.

10.67(3) Board members have the right to conduct a direct examination at the outset of a witness's testimony or at a later stage thereof. Direct examination and cross-examination by board members are subject to objections properly raised in accordance with the rules of evidence noted in rule 10.69(169,272C).

811—10.68(169,272C) Order of proceedings. Before testimony is presented the record shall show the identity of any board members present, the presiding hearing officer, and the identity of the primary parties and their representatives, and of the fact that all testimony is being recorded.

Hearings before the board generally follow the order established by these rules, subject to modification at the discretion of the board conducting the proceedings.

1. The presiding officer shall read the specification of charges and the answer thereto, or other responsive pleading, filed by the respondent prior to the hearing.

2. The assistant attorney general representing the public interest before the board shall make an opening statement.

3. The respondent or respondents shall each be offered the opportunity to make an opening statement. A respondent may elect to reserve their opening statement until just prior to the representation of evidence by the respondent.

4. The presentation of evidence on behalf of the public.

5. The presentation of evidence on behalf of the respondent(s).

6. Rebuttal evidence on behalf of the public.

7. Rebuttal evidence on behalf of the respondent(s).

8. Closing arguments first on behalf of the public, then on behalf of the respondent, and then on behalf of the public.

811—10.69(169,272C) Rules of evidence—documentary evidence—official notice.

10.69(1) Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial.

10.69(2) Objections to evidentiary offers may be made and shall be noted in the record. Motions and offers to amend the pleadings may also be made at the hearing and shall be noted in the record together with the rulings thereon.

10.69(3) Subject to the above requirements, when a hearing will be expedited and the interest of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verification written form.

10.69(4) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Accurate copies of the document offered at the hearing shall be furnished to those members of the board sitting at the hearing and to opposing parties.

10.69(5) Witnesses at the hearing, or persons whose testimony has been submitted in written form if available, shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.

10.69(6) Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the board. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest such facts before the decisions are announced unless the board determines as part of the record or decisions that fairness to the parties does not require an opportunity to contest such facts.

811—10.70(169,272C) Final decision. When three or more members of the board preside over the reception of evidence at the hearing, its decision is a final decision.

10.70(1) A final decision shall be in writing, dated, and shall consist of the following parts:

a. A concise statement of the facts which support the finding of fact.
b. Findings of fact. A party may submit proposed findings of fact; and where this is done, the decision shall include a ruling on each proposed finding.

10.70(2) Conclusions of law which shall be supported by cited authority or reasoned opinion.

10.70(3) The decision or order which sets forth the action to be taken or the disposition of the case.

10.70(4) The decision may provide that the respondent be exonerated, or may provide for any disciplinary sanction provided in rule 10.2(169,272C).

811—10.71(169,272C) Confidentiality. At no time prior to the release of the final decision by the board shall any portion or the whole thereof be made public or be distributed to any persons other than the parties.

811—10.72(169,272C) Notification of decision. All parties to a proceeding hereunder shall be promptly furnished with a copy of any final decision or order either in person or by first-class mail, or by telephone if necessary to assure that the parties learn of the decision or order first.

811—10.73(169,272C) Motion for rehearing. Within 20 days after issuance of a final decision, any party may file an application for a rehearing. The application shall state the specific grounds for rehearing and the relief sought and copies thereof shall be timely mailed to all of the parties. The application shall be deemed denied if not granted within 20 days after service on the secretary.

10.73(1) Upon a rehearing, the board shall consider facts not presented in the original proceeding if either:

a. Such facts arose subsequent to the original proceedings; or
b. The party offering such evidence could not reasonably have provided such evidence at the original proceedings; or
c. The party offering the additional evidence was misled by any party as to the necessity of offering such evidence at the original hearing.

10.73(2) The decision made upon rehearing may incorporate by reference any and all parts of the decision made upon the conclusion of the original proceeding.

811—10.74(169,272C) Judicial review and appeal. Judicial review of the board's action may be sought in accordance with the terms of the Iowa administrative procedure Act, from and after the date of the board's decision.

811—10.75(169,272C) Board decision. The board's decision and order revoking or suspending a license to practice veterinary medicine or to discipline a licensee shall remain in force and effect until the appeal is finally determined and disposed of upon its merit.

811—10.76(169,272C) Rules of general applicability. Ex parte communications, separation of function, judicial review and appeals shall be in accordance with the terms of the Iowa administrative procedure Act (Iowa Code chapter 17A).

811—10.77(169,272C) Publication of decisions. Final decisions of the board relating to disciplinary procedures shall be transmitted to the appropriate professional association(s), and a newspaper(s) of general circulation to be selected by the board.

811—10.78(169,272C) Reinstatement. Any person whose license to practice veterinary medicine has been revoked or suspended by the board may apply to the board for reinstatement in accordance with the terms and conditions of the order of revocation or suspension.

10.78(1) If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the board's order or the date of voluntary surrender.

10.78(2) All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for the reinstatement of the license. Such application shall be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the petition for reinstatement, including all matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board. The board and the respondent may informally settle the issue of reinstatement. The respondent may choose to have an informal reinstatement conference before the board, as provided in rule 10.78(169,272C).

10.78(3) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish such facts shall be on the respondent.

10.78(4) An order of reinstatement shall be based upon a decision which incorporates findings of fact and conclusions of law, and must be based upon the affirmative votes of not fewer than five members of the board. This order will be published as provided for in rule 10.77(169,272C).

811—10.79(169,272C) Informal reinstatement conference.

10.79(1) Request. Upon informed and written consent by the respondent, and upon consent of the assistant attorney general representing the public interest, an informal reinstatement conference before the board may be held.

10.79(2) Confidentiality. The conference shall be open to the public unless the respondent requests that it be closed as provided in Iowa Code section 272C.6. Material submitted to the board regarding a licensee subject to suspension or revocation shall be deemed to be investigatory in nature and, therefore, confidential. After an application for reinstatement is filed by the respondent, no material regarding the respondent shall be presented to board members until either a formal hearing is held or a request for an informal settlement conference is made and approved. If a request for an informal reinstatement conference is made and approved, all materials submitted by the respondent shall be provided to the board for its consideration in preparation for the informal conference.

10.79(3) Disposition. After conducting an informal reinstatement conference, the board may issue a preliminary order for reinstatement, may issue a preliminary order denying reinstatement, or may order a formal hearing on the application. A preliminary order shall incorporate findings of fact and conclusions of law. A preliminary order automatically becomes final if no appeal is filed with the

board within 30 days of the issuance of the preliminary order. Timely appeal of a preliminary order is a prerequisite for exhaustion of administrative remedies.

811—10.80(169,272C) License denial. Any request to have a hearing before the board concerning the denial of a license shall be submitted by the applicant in writing to the board at the address in rule 811—1.2(17A,169) by certified mail, return receipt requested, within 30 days of a mailing of a notice of denial of license.

These rules are intended to implement Iowa Code sections 17A.11 to 17A.16, 169.13, 169.14, and 272C.3 to 272C.6.

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